

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

and

AQUINNAH/GAY HEAD COMMUNITY
ASSOCIATION, INC. and TOWN OF
AQUINNAH,

*Intervenor-Plaintiffs/Counterclaim-
Defendants,*

vs.

THE WAMPANOAG TRIBE OF GAY
HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL OF
GAY HEAD, INC., and THE AQUINNAH
WAMPANOAG GAMING
CORPORATION,

Defendants/Counterclaim-Plaintiffs,

and

CHARLIE BAKER, in his official capacity
as GOVERNOR, COMMONWEALTH OF
MASSACHUSETTS, et al.,

Third-Party Defendants.

CASE NO: 1:13-cv-13286-FDS

[Formerly Supreme Judicial Court for Suffolk
County, Massachusetts, CIVIL ACTION NO.
2013-0479]

**CHAIRWOMAN CHERYL ANDREWS-MALTAIS DECLARATION IN
OPPOSITION TO THE TOWN OF AQUINNAH'S MOTION FOR ENTRY OF
FINAL JUDGMENT**

I, CHERYL ANDREWS-MALTAIS declare:

1. I am the elected Chairwoman of the Wampanoag Tribe of Gay Head (Aquinnah). I make this Declaration in support of Wampanoag Tribe of Gay Head (Aquinnah) (“Tribe”) and Aquinnah Wampanoag Gaming Corporation, parties to the above-captioned litigation. I am a resident of the Edgartown, Massachusetts.
2. The Tribe is a federally-recognized tribe located on Martha’s Vineyard in the County of Dukes County, Massachusetts. After surviving centuries of federal and state policies designed to exterminate Native American people including the Aquinnah, the Tribe was federally recognized in 1987.
3. As Chairwoman of the Tribe, I am the presiding officer over the Tribal Council, and am the highest-ranking officer among the tribal officers. I make this declaration based on my role as a Tribal member, the highest elected official of the Tribe, Chairwoman of the Board of Directors of the Aquinnah Wampanoag Gaming Corporation, and as a member of the Martha’s Vineyard community, each of which I take very seriously.
4. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to the contents of this Declaration.
5. The Tribal Council has assigned property to the Aquinnah Wampanoag Gaming Corporation (“AWGC”), a wholly owned and tribally chartered corporation. The AWGC is responsible for advancing the Tribal gaming initiative and has been doing so since its Charter was issued in 2003.
6. The original location for the temporary gaming facility was to be an unfinished Community Center. However, following the injunction enjoining the Tribe from using the Community Center as the temporary gaming facility, we were required to complete

the building for use as a community center.

7. Following denial of the Petition for Certiorari by the Supreme Court of the United States, the Aquinnah Wampanoag Gaming Corporation entered into a development agreement with Global Gaming Solutions, the commercial business of the Chickasaw Nation which owns and operates over 20 gaming facilities including WinStar World, the largest gaming facility in the United States.
8. The federal and tribal law requires the Tribe's gaming facility be constructed, maintained and operated in a way that adequately protects the environment and public health and safety of the public as required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2710 (b)(2)(E) and complies with the requirements of all applicable health, safety, and environmental standards enacted by the Tribe and any applicable federal laws.
9. In furtherance of the goals outlined in Paragraph 8 above, the Tribal Council has adopted as tribal law the regulations under the Commonwealth of Massachusetts Wetland Protection Act, the family of building codes issued by the International Code Council as adopted by and in effect in the Commonwealth as of the date of the Tribe's adoption, the regulations under the Commonwealth's Environmental Code, and the regulations under the Commonwealth's Health Code.
10. The Tribal Council, pursuant to the provisions of the NIGC-approved Gaming Ordinance, has appointed three experienced and well-credentialed Commissioners to comprise the Aquinnah Tribal Gaming Commission.
11. Chairman of the Tribal Gaming Commission Lawrence S. Roberts is an attorney and former General Counsel of the National Indian Gaming Commission. Vice-Chairman Todd Araujo is a member of the Tribe, an attorney and former staff attorney for the

National Indian Gaming Commission. Commissioner John Duffy is an attorney and former Counselor to the Secretary of Interior. Each of these Commissioners have and continue represent federally recognized tribes in front of federal agencies such as the Department of Interior and National Indian Gaming Commission. Collectively, the Commissioners bring over 90 years of legal experience to the Gaming Commission.

12. The Tribe has adopted Aquinnah Wampanoag Gaming Ordinance that requires the Aquinnah Wampanoag Gaming Commission or Tribal Council to issue a Facility License that ensures the construction maintenance of the Gaming Facility and the operation of gaming be conducted in a manner that protects the environment and the public health and safety. Failure to conduct gaming in a manner that does not to protect the environment and the public health and safety would result in either or both, an enforcement action brought by the National Indian Gaming Commission and/or the by the Tribal Gaming Commission and potential closure order.
13. The Gaming Ordinance was amended in April 2012 to include a definition of the Tribe's Settlement Lands. That amendment triggered a review by the National Indian Gaming Commission and the Department of Interior to determine whether the Tribe's Settlement Lands were eligible for gaming under the Indian Gaming Regulatory Act. On August 29, 2013, the amended Ordinance was approved by the National Indian Gaming Commission.
14. The Gaming Ordinance requires a facility license be issued before the gaming facility opens to the public. A facility license cannot be issued unless the construction meets the requirements of the Indian Gaming Regulatory Act and applicable federal and tribal law.
15. In order to ensure compliance with Tribal law identified in Paragraph 9 above, the Tribe

has contracted with a well-respected and well-qualified company, Massachusetts Code Consulting, LLC, ("MCC") to provide permit administration services and inspections of the construction and maintenance of the gaming facility.

16. MCC was founded by a team of accomplished professional engineers and building officials with the common purpose of improving public safety and reducing construction-related costs through the provision of high-quality third-party plan reviews, and other departmental services, on behalf of governmental units in the domains of building safety, construction, fire safety, prevention, public and environmental health, and accessibility.
17. Felix Zemel, Managing Principal of MCC, has been appointed Permit Administrator for the Tribe by the Tribal Council. Mr. Zemel brings over a decade of public and private sector code enforcement and development experience. He recently served as the Chief of Building Inspections / BBRS Administrator and Director of Code Development and Manufactured Buildings for the MA Department of Public Safety, and previously held positions with the Boston Housing Authority and the towns of Framingham, Cohasset, Sherborn, and Dover, MA. He is a Certified Building Official and Registered Sanitarian, and is an active member of the National Environmental Health Association, American Academy of Sanitarians, and many other professional organizations. He currently serves on the ICC's Tall Wood Ad Hoc Committee, and the NFPA's Building Construction, Building Systems, Structures Construction and Materials, and Fire Reporting Technical Committees.
18. Further, the Tribe continues to comply with Town regulations regarding permitting as it applies to non-gaming endeavors. For example, in October 2018 we contracted with Willett Electric to install a generator on tribal property at the Wampanoag Environmental

Laboratory located at 1 Herring Creek Road, Aquinnah, Massachusetts. We also contracted with Willett Electric in January 2019 to perform electrical work at the Tribal Administration Building located at 20 Black Brook Road, Aquinnah, Massachusetts. Both these locations are tribal trust property. Even the Community Center, the subject of the injunction at issue here, was permitted and inspected by the Town's building inspectors before a certificate of occupancy for use as a community center was issued and the facility was opened. However, the Town's lack of a full-time building inspector or even a building inspector with regular hours added significant time and expense to the completion of the Community Center creating a grave fiscal and financial hardship on the Tribe.

19. I have met personally with Board of Selectman Jim Newman regarding this proposed gaming project and reviewed all the correspondence they have sent to the Tribe and the AWGC. Neither in our conversations nor in their correspondence has the Town presented the Tribe or AWGC with any science-based concern over the construction activity or operation of the gaming facility. Instead, in both the meetings and correspondence the Town focused on their desire for the Tribe to provide them with the funding for additional police officers – albeit without providing a science-based or budget-based rationale for adding additional officers nor providing the additional number of officers needed.
20. Attached as Exhibit A is a true and correct copy of the Minutes of the November 21, 2017 Board of Selectmen for the Town of Aquinnah.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th Day of April, 2019.

A handwritten signature in cursive script, reading "Cheryl Andrew-Maltais". The signature is fluid and elegant, with the first name "Cheryl" being more prominent than the last name.

CHERYL ANDREW-MALTAIS, Chairwoman
Wampanoag Tribe of Gay Head (Aquinnah)